

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 96-26, page 5.

LIFO; price indexes; department stores. The March 1996 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, March 31, 1996.

T.D. 8665, page 4.

Final regulations concerning transfers of cash to a corporation or a partnership. These regulations affect taxpayers in transactions under sections 351 or 721 of the Code when there is an offering of stock or partnership interest through an underwriter. Rev. Rul. 78-294 obsoleted.

ADMINISTRATIVE

Del. Order 236 (Rev. 2), page 7.

This order has been revised to eliminate terms that are causing confusion in applying this order and to expand the scope to include certain directly related parties to covered transactions. Del. Order 236 (Rev. 1) superseded.

Del. Order 247, page 7.

This order delegates authority to examination case managers to accept settlement offers and execute closing agreements on Industry Specialization Program (ISP) and International Field Assistance Specialization Program (IFASP) issues.

GL-1-96, page 9.

Proposed regulations provide that the authority to modify or rescind taxpayer assistance orders is limited to the Commissioner, the Deputy Commissioner, or the Taxpayer Ombudsman.

Announcement 96-44, page 10.

Filers of Form 8233, Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual, can apply for exemption from withholding using the current Form 8233 (Rev. April 1993).

Announcement 96-45, page 10.

T.D. 8175, 1988-1 C.B. 191, relating to the limitations on passive activity credits, is corrected.

Announcement 96-46, page 10.

T.D. 8212, 1988-2 C.B. 83, relating to the availability of optional forms of benefit, is corrected.

Finding Lists begin on page 14.

Announcement of Disbarments and Suspensions begin on page 11.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the

quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

The Bulletin Index-Digest System, a research and reference service supplementing the Bulletin, may be obtained from the Superintendent of Documents on a subscription basis. It consists of four Services: Service No. 1, Income Tax; Service No. 2, Estate and Gift Taxes; Service No. 3, Employment Taxes; Service No. 4, Excise Taxes. Each Service consists of a basic volume and a cumulative supplement that provides (1) finding lists of items published in the Bulletin, (2) digests of revenue rulings, revenue procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents U.S. Government Printing Office, Washington, D.C. 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 351.—Transfer to Corporation Controlled by Transferor

26 CFR 1.351-1: Transfer to corporation controlled by transferor.

T.D. 8665

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Treatment of Underwriters in Section 351 and Section 721 Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning transfers of cash to a corporation or a partnership. The final regulations will affect taxpayers in transactions under section 351 or section 721 when there is an offering of stock or partnership interests through an underwriter.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation under section 351(a), Susan T. Edlavitch, (202) 622-7750; concerning the regulation under section 721(a), James A. Quinn, (202) 622-3060 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under section 351 and section 721. The final regulations provide for the treatment of transfers of cash to a corporation or a partnership pursuant to an offering of stock or partnership interests through an underwriter.

Section 351(a) provides that no gain or loss is recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in the corporation and immediately after the exchange the person or persons are in control (as defined in section 368(c)) of the corporation.

Section 721(a) provides that no gain or loss is recognized to a partnership or

to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

On August 10, 1995, the IRS published in the Federal Register a notice of proposed rulemaking (CO-26-95 [1995-2 C.B. 466]), adding regulations under section 351 and section 721 of the Internal Revenue Code relating to transfers of cash to a corporation or a partnership (60 FR 40792). The proposed rules were based on the conclusion that Situation 2 of Rev. Rul. 78-294 (1978-2 C.B. 141) does not reflect current underwriting practices. The proposed rules were also based on the conclusion that underwritings of partnership interests should be treated similarly to underwritings of stock. The rules, under certain circumstances, disregard underwriters of stock and partnership interests for purposes of section 351 and section 721.

Public comments and the final regulations

The IRS received few comments from the public on the proposed regulations. The comments received were generally supportive of the proposed regulations but sought guidance beyond the intended scope of the rules. No public hearing was requested and none was held. After consideration of all the comments, the regulations proposed by CO-26-95 are adopted by this Treasury decision.

In the notice of proposed rulemaking, the IRS and Treasury invited public comment with respect to three issues: (a) Whether the proposed rules should apply for all tax purposes; (b) whether the proposed rules should be limited to underwriters; and (c) whether the proposed rules should be limited to cash transactions. After consideration of these issues, the regulations proposed by CO-26-95 are adopted without any change in language. However, although the regulations specifically concern underwriters, it is intended that its principles could apply equally in factually analogous situations. For example, if the ownership by other intermediaries in the distribution of stock or partnership interests, such as broker-dealers, is transitory, that ownership should also be disregarded.

Effect on other documents

The following publication is obsolete as of May 1, 1996: Rev. Rul. 78-294 (1978-2 C.B. 141).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Susan T. Edlavitch of the Office of Assistant Chief Counsel (Corporate) and Brian J. O'Connor, formerly of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.351-1 also issued under 26 U.S.C. 351. * * *

Section 1.721-1 also issued under 26 U.S.C. 721. * * *

Par. 2. In §1.351-1, paragraph (a)(3) is added to read as follows:

§1.351-1 Transfer to corporation controlled by transferor.

(a) * * *

(3) *Underwritings of stock*—(i) *In general.* For the purpose of section 351, if a person acquires stock of a corporation from an underwriter in exchange for cash in a qualified underwriting transaction, the person who acquires stock from the underwriter is treated as transferring cash directly to the corporation in exchange for stock of the corporation and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a corporation issues stock for cash in an underwriting in which either the underwriter is an agent of the corporation or the underwriter's ownership of the stock is transitory.

(ii) *Effective date.* This paragraph (a)(3) is effective for qualified underwriting transactions occurring on or after May 1, 1996.

* * * * *

Par. 3. In §1.721-1, paragraph (c) is added to read as follows:

§1.721-1 Nonrecognition of gain or loss on contribution.

* * * * *

(c) *Underwritings of partnership interests*—(1) *In general.* For the purpose of section 721, if a person ac-

quires a partnership interest from an underwriter in exchange for cash in a qualified underwriting transaction, the person who acquires the partnership interest is treated as transferring cash directly to the partnership in exchange for the partnership interest and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a partnership issues partnership interests for cash in an underwriting in which either the underwriter is an agent of the partnership or the underwriter's ownership of the partnership interests is transitory.

(2) *Effective date.* This paragraph (c) is effective for qualified underwriting transactions occurring on or after May 1, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved March 26, 1996.

Leslie Samuels,
Assistant Secretary of Treasury.

(Filed by the Office of the Federal Register on April 30, 1996, 8:45 a.m., and published in the issue of the Federal Register for May 1, 1996, 61 F.R. 19188)

Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: *Last-in, first-out inventories.*

LIFO; price indexes; department stores. The March 1996 Bureau of

Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, March 31, 1996.

Rev. Rul. 96-26

The following Department Store Inventory Price Indexes for March 1996 were issued by the Bureau of Labor Statistics on April 12, 1996. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, March 31, 1996.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups—soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS (January 1941 = 100, unless otherwise noted)

Groups	Mar. 1995	Mar. 1996	Percent Change from Mar. 1995 to Mar. 1996 ¹
1. Piece Goods	501.4	507.9	1.3
2. Domestic and Draperies	648.8	652.3	0.5
3. Women's and Children's Shoes	636.3	651.5	2.4
4. Men's Shoes	920.3	897.6	-2.5
5. Infants' Wear	623.9	643.0	3.1
6. Women's Underwear	522.8	535.9	2.5
7. Women's Hosiery	280.4	284.4	1.4
8. Women's and Girls' Accessories	540.3	556.5	3.0
9. Women's Outerwear and Girls' Wear	445.9	426.9	-4.3
10. Men's Clothing	616.9	625.5	1.4
11. Men's Furnishings	580.0	590.5	1.8
12. Boys' Clothing and Furnishings	489.2	490.9	0.3
13. Jewelry	1026.6	1052.5	2.5
14. Notions	778.5	781.1	0.3
15. Toilet Articles and Drugs	839.5	870.4	3.7

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)—Continued

Groups	Mar. 1995	Mar. 1996	Percent Change from Mar. 1995 to Mar. 1996 ¹
16. Furniture and Bedding.....	651.5	672.8	3.3
17. Floor Coverings.....	571.3	570.6	-0.1
18. Housewares	773.3	808.1	4.5
19. Major Appliances	247.5	248.5	0.4
20. Radio and Television.....	85.2	79.6	-6.6
21. Recreation and Education ²	114.7	113.6	-1.0
22. Home Improvements ²	121.7	123.3	1.3
23. Auto Accessories ²	106.6	107.1	0.5
Groups 1—15: Soft Goods.....	603.7	606.1	0.4
Groups 16—20: Durable Goods	465.1	470.7	1.2
Groups 21—23: Misc. Goods ²	114.2	113.8	-0.4
Store Total ³	556.4	559.0	0.5

¹Absence of a minus sign before percentage change in this column signifies price increase.

²Indexes on a January 1986=100 base.

³The store total index covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Stan Michaels of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Michaels on (202) 622-4970 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Delegation Order No. 236 (Rev. 2)

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: The delegation order has been revised to eliminate terms that are causing unnecessary confusion in applying the delegation order and to expand the scope to include certain directly-related parties to covered transactions. The text of the delegation order appears below.

EFFECTIVE DATE: March 15, 1996.

FOR FURTHER INFORMATION CONTACT: Harry E. Lebedun, CP:EX:C:C, Room 2036, 1111 Constitution Ave., NW, Washington, DC. 20224, (202) 622-3654 (not a toll free number).

Delegation Order No. 236 (Rev. 2)

Effective date: March 15, 1996.

Application of Appeals Settlement to Coordinated Examination Program Taxpayers

The authority vested in the Commissioner of the Internal Revenue by Treasury Order Nos. 150-07, 150-09 and 150-10 and the authority contained in 26 U.S.C. Section 7121 is hereby delegated as follows:

1. All examination case managers are delegated discretionary authority under section 7121 of the Internal Revenue Code to accept settlement offers on any issue in a Coordinated Examination Program case under their respective jurisdiction. This authority applies, regardless of the amount of liability sought to be compromised, where a settlement (including a hazards settlement) has been effected by Appeals in a previous, subsequent or the same tax period (the settled period) with respect to the same issue of the same taxpayer, or of another taxpayer who was directly involved in the transaction or taxable event. Prior to finalization, the proposed settlement,

together with any related closing agreement or Form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of (to be completed by case manager), shall be reviewed and approved by the appropriate branch chief within the Examination function.

2. For purposes of this delegation of limited settlement authority, no settlement shall be effected unless all of the following factors are present in the tax year currently under Examination jurisdiction:

(a) The facts surrounding a transaction or taxable event in the tax period under examination are substantially the same as the facts in the settled period.

(b) The legal authority relating to such issue must have remained unchanged.

(c) The underlying issue must have been settled by Appeals independently of other issues (e.g. no trading of issues) in the settled tax period.

(d) The issue must have been settled in Appeals with respect to the same taxpayer (including consolidated and unconsolidated subsidiaries) or another taxpayer who was directly involved in the transaction or taxable event in the settled tax period.

3. The criteria in section 2 apply to taxpayers "directly involved" in the transaction. Illustrations of a taxpayer "directly involved" in the transaction are as follows:

(a) Taxpayers A and B are directly involved in the same transaction or taxable event in tax period 19xx where A and B would logically receive similar tax treatment. Taxpayer A's treatment of the transaction is adjusted by Examination and settled in Appeals. The adjustment involves the same legal issue with respect to taxpayer B. Examination may resolve Taxpayer B's case in a manner consistent with the Appeals settlement of Taxpayer A.

(b) Taxpayers A and B are directly involved in the same transaction or taxable event in tax period 19xx where A and B would logically receive similar tax treatment. Taxpayer A's treatment of the transaction is adjusted by Examination and settled by Appeals. In addition, taxpayer A or B (or both) is directly involved in a separate, but similar transaction or taxable event in the same, prior, or subsequent tax

period involving the same legal issue as above. Such issue for taxpayers A or B only may also be settled in a consistent manner provided it involves substantially the same facts.

4. All examination case managers are delegated authority to execute closing agreements and the Form 870-AD in order to effect any final settlement reached in a Coordinated Examination case.

5. For settlement authority of Industry Specialization and International Field Assistance Specialization Program coordinated issues, see Delegation Order No. 247.

6. The authority delegated in this Order may not be redelegated.

7. The authority contained in this Order supplements the authority contained in Delegation Order 97 (as revised).

8. Delegation Order No. 236 (Rev. 1), effective June 3, 1994, is superseded.

Dated: March 15, 1996.

Michael P. Dolan,
Deputy Commissioner.

(Filed by the Office of the Federal Register on April 2, 1996, 8:45 a.m., and published in the issue of the Federal Register for April 3, 1996, 61 F.R. 14852)

Delegation Order No. 247

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of authority.

SUMMARY: Provides resolution authority to Examination on coordinated issues in the Industry Specialization Program (ISP) and International Field Assistance Specialization Program (IFASP) for those issues on which Appeals has coordinated issue papers containing settlement guidelines or positions. Examination resolution may be reached only subject to the concurrence of both the Examination and Appeals ISP and/or IFASP Coordinators. The text of the delegation order appears below.

EFFECTIVE DATE: March 15, 1996.

FOR FURTHER INFORMATION CONTACT: Harry E. Lebedun, CP:EX:C:C, Room 2036, 1111 Constitution Ave., NW, Washington, DC. 20224, (202) 622-3654 (Not a toll free number).

Order No. 247

Effective Date: March 15, 1996.

Authority of Examination Case Managers to Accept Settlement Offers and Execute Closing Agreements on Industry Specialization Program (ISP) and International Field Assistance Specialization Program (IFASP) Issues.

The authority vested in the Commissioner of the Internal Revenue by Treasury Order Nos. 150-07, 150-09, 150-10 and the authority contained in

26 U.S.C. Section 7121 is hereby delegated as follows:

1. All examination case managers are delegated discretionary authority in Coordinated Examination Program cases under their jurisdiction to accept settlement offers, regardless of the amount of the liability sought to be compromised, with respect to coordinated issues within the ISP and IFASP on which Appeals has coordinated issue papers containing settlement guidelines or positions. Prior to finalization, the proposed settlement, together with any related closing agreement and/or Form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of (to be completed by case manager), and supporting documentation, shall be reviewed and approved by the appropriate specialists/coordinators for ISP and IFASP within Examination, International and the Appeals functions.

2. For purposes of this limited dele-

gation of settlement authority, coordinated issues within the ISP and IFASP are those issues published in the Internal Revenue Manual.

3. All examination case managers are delegated authority to execute closing agreements and/or the Form 870-AD in order to effect any settlement reached in a Coordinated Examination case involving ISP and IFASP issues.

4. This authority delegated in this order may not be redelegated.

5. The authority contained in this Order supplements the authority contained in Delegation Order 97 (as revised).

Dated: March 15, 1996.

Michael P. Dolan,
Deputy Commissioner.

(Filed by the Office of the Federal Register on April 2, 1996, 8:45 a.m., and published in the issue of the Federal Register for April 3, 1996, 61 F.R. 14852)

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Authority to Modify or Rescind Taxpayer Assistance Orders

GL-1-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding taxpayer assistance orders. The proposed regulations provide that the authority to modify or rescind taxpayer assistance orders is limited to the Commissioner, the Deputy Commissioner, or the Ombudsman. The proposed regulations affect all taxpayers with respect to whom a taxpayer assistance order is issued.

DATES: Written comments and requests for a public hearing must be received by July 18, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (GL-001-96), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (GL-001-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, (202) 622-3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

This document contains a proposed amendment to the Procedure and Administration Regulations (26 CFR part 301) under section 7811 of the Internal Revenue Code. In Announcement 96-5 (1996-4 I.R.B. 99), Administrative Initiatives to Enhance Taxpayer Rights, IRS indicated it was increasing the power of the Ombudsman to assist taxpayers by affording greater protection

for taxpayer assistance orders. Effective on the date of the Announcement 96-5, January 4, 1996, the power to modify or rescind a taxpayer assistance order issued under section 7811 is limited to the Commissioner, Deputy Commissioner, or the Ombudsman.

The current regulations provide that taxpayer assistance orders may be modified or rescinded by the Commissioner, Deputy Commissioner, or Ombudsman and, additionally, the following IRS officials: a district director, a service center director, a compliance center director, a regional director of appeals, or the superiors of those officials. Announcement 96-5 indicates that proposed regulations would be published in early 1996 to reflect the policy restriction in authority to modify or rescind taxpayer assistance orders. Under the proposed regulations, officials other than the Commissioner, Deputy Commissioner, or the Ombudsman may modify or rescind a taxpayer assistance order only with the specific written authorization of the Commissioner, Deputy Commissioner, or Ombudsman.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight copies) to the IRS. All comments will be available

for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Robert A. Miller, Office of Assistant Chief Counsel (General Litigation), CC:EL:GL. However, other personnel from the IRS and Treasury Department participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7811-1 is amended by revising paragraphs (d) and (h) to read as follows:

§301.7811-1 Taxpayer Assistance Orders.

* * * * *

(d) *Authority to modify or rescind limited to Commissioner, Deputy Commissioner, or Taxpayer Ombudsman.* The Commissioner, the Deputy Commissioner, and the Ombudsman may modify or rescind a taxpayer assistance order. A district director, a service center director, a compliance center director, a regional director of appeals, or the superiors of those officials, may modify or rescind a taxpayer assistance order only with the specific written authorization of the Commissioner, Deputy Commissioner, or the Ombudsman.

* * * * *

(h) *Effective dates.* This section is effective on March 20, 1992, except paragraph (d) of this section which is

effective on the date 90 days after the date of publication of these regulations as final regulations in the Federal Register.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on April 18, 1996, 8:45 a.m., and published in the issue of the Federal Register for April 19, 1996, 61 F.R. 17265)

Filers of Form 8233, Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual

Announcement 96-44

Under Internal Revenue Code section 1441, payments made to nonresident alien independent contractors, students, professors, teachers, and researchers are normally subject to 30% Federal income tax withholding. However, some payments may be exempted from withholding because of a tax treaty or the personal exemption amount. Form 8233 is used to establish that the amounts concerned qualify for the exemption from withholding.

Form 8233 is being revised and should be available by January 1997. Until then, filers can still apply for exemption from withholding using the current Form 8233 (Rev. April 1993) that has an (OMB) expiration date of April 30, 1996. You can order Form 8233 by calling 1-800-TAX-FORM (1-800-829-3676).

Income Tax; Taxable Years Beginning After December 31, 1953; Limitations on Passive Activity Losses and Credits; Correction

Announcement 96-45

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to temporary regulations (TD 8175 [1988-1 C.B. 191]), which were published in the Federal Register

Thursday, February 25, 1988 (53 FR 5686), relating to the limitations on passive activity credits.

EFFECTIVE DATE: February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter, (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these correction are under sections 469 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 8175) contain errors which may prove to be misleading and are in need of clarification.

* * * * *

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.469-5T [Corrected]

Par. 2. In § 1.469-5T, paragraphs (d)(A) and (d)(B) are correctly designated as paragraphs (d)(1) and (d)(2).

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 29, 1996, 8:45 a.m., and published in the issue of the Federal Register for April 1, 1996, 61 F.R. 14247)

Limitations on Availability of Benefits; Correction

Announcement 96-46

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 8212 [1988-2 C.B. 83]), which were published in the Federal Register Monday, July 11, 1988 (53 FR 26050), relating to the availability of optional forms of benefit.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION

CONTACT: David Munroe, (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction is under sections 401, and 411 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8212) contains an error which may prove to be misleading and is in need of clarification.

* * * * *

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.401(a)-4 [Corrected]

Par. 2. Section 1.401(a)-4 is amended by removing paragraph (a)(2)(ii)(B) in "A-2".

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 29, 1996, 8:45 a.m., and published in the issue of the Federal Register for April 1, 1996, 61 F.R. 14247)

Announcement of the Disbarment, Suspension, or Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal

Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attor-

ney, certified public accountant, enrolled agent or enrolled actuary and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Behrens, William	Kenosha, WI	Enrolled Agent	March 6, 1996 to May 5, 1996
Warter, J. Christopher	South Bend, IN	Attorney	Indefinite from March 8, 1996
Leckie, Jerry B.	Macon, GA	Enrolled Agent	March 9, 1996 to March 8, 1999
Retzlaff, Gene	Hortonville, WI	Enrolled Agent	March 18, 1996 to July 17, 1996
Cahill, Donal	Stratford, CT	Attorney	April 4, 1996 to April 3, 1997
Guidera, George C.	Straford, CT	Attorney	April 11, 1996 to October 10, 1996
Kirk, Gregg T.	Dallas, TX	CPA	Indefinite from May 1, 1996
Brock, Guy Charles	Spokane, WA	CPA	Indefinite from May 1, 1996
Mathews, Thomas	Cincinnati, OH	CPA	May 1, 1996 to August 31, 1996
Farnsworth Jr., Harold	Starke, FL	CPA	May 1, 1996 to April 30, 1998
King, John C.	Wichita, KS	Attorney	May 1, 1996 to August 31, 1996

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal

Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled

agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Noske, Joan M.	Richmond, MN	CPA	Indefinite from March 1, 1996
Wahl, Roger W.	Martinez, GA	CPA	Indefinite from March 1, 1996
Stojanov, Dragan	Detroit, MI	Attorney	Indefinite from March 13, 1996
Gay, Randall D.	Honolulu, HI	CPA	Indefinite from March 13, 1996
Sheffey, Ralph	LaCrosse, WI	Attorney	Indefinite from March 13, 1996
Doyle, Robert	Sacramento, CA	CPA	Indefinite from March 19, 1996
Singer, Michael G.	Minnetonka, MN	Attorney	Indefinite from March 19, 1996
Mohme, Robert H.	St. Louis, MO	Attorney	Indefinite from March 20, 1996
Vogelei, George Mac	Novato, CA	Attorney	Indefinite from March 20, 1996
Gaskins, Oscar N.	Cherry Hill, NJ	Attorney	Indefinite from March 26, 1996
Gawel, Michael S.	Niagara Falls, NY	Attorney	Indefinite from March 29, 1996

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified, below*).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior

ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1995–27 through 1995–52 will be found in Internal Revenue Bulletin 1996–1, dated January 2, 1996.

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¹A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1995-27 through 1995-52 will be found in Internal Revenue Bulletin 1996-1, dated January 2, 1996.